

REMARKS

This application has been carefully reviewed in light of the Office Action dated April 27, 2007. Applicant has amended claims 1 and 11. Reconsideration and favorable action in this case are respectfully requested.

The Examiner has rejected claims 1, 11 and 26 under 35 U.S.C. 112 as being indefinite. Applicants believe that the Examiner is contending that the words “payment to employees” are indefinite because the settlement may involve payment from the employee to the employer. Applicants have amended claims 1 and 11 to correct this; claim 26 did not specify the direction of the settlement, i.e., from employer to employee or from employee to employer, but has been amended nonetheless.

The Examiner has rejected claims 1-9, 11-19 and 26 under 35 U.S.C. 103 as being unpatentable over U.S. Pat. No. 6,041,313 to Gilbert, in view of U.S. Pat. No. 5,933,812 to Meyer. Claims 10 and 20 stand rejected as being unpatentable over Gilbert in view of Meyer and further in view of U.S. Pub. No. 2001/0014873. Claims 20-25 stand rejected as unpatentable over Gilbert in view of Henderson.

As stated in the previous Amendment, Applicants do not dispute that prior art devices calculate settlement amounts. As described in the application, prior art devices calculate a settlement amount *without accounting for any investment withholding*. Neither Gilbert nor Meyer shows a device with this feature.

The Examiner has stated that Gilbert shows such a calculation at column 7, lines 45-47, column 8, lines 42-45 and 56-59 and column 10 at lines 27-33 and lines 55-67. Applicants do not believe than any of these passages or any other teaching in Gilbert, shows a calculation of a “settlement amount for transfer between the employer and the employees according to the information regarding sales and credit/debit gratuities and predefined preferences for withholding investment”.

While the Examiner has stated that the claims are given broadest reasonable interpretation, it is important that the interpretation be reasonable and that the interpretation of the references be reasonable.

The claims clearly state that the calculated settlement amount is between the employer and the employee. Gilbert discusses allocation of employee contributions *within a 401k plan*; to the understanding of the Applicants, it does not discuss a calculation of how much is contributed by each employee, and it does not discuss the exchange of money between the employee and the employer based on gratuities and preferences for withholding investment.

The specific citations by the Examiner will be discussed individually. The citation at column 7, lines 45-47 concerns how much is *vested* according to a vesting schedule. This has nothing to do with any settlement between the employer and an employee, and there is nothing to suggest that it would have anything to do with predefined preferences or withholding investment.

The citation at column 8, lines 42-45 allows an operated to enter monthly contributions by a numeric keypad. This does not involve a calculation of any sort.

The citation at column 8, lines 56-69 concerns the distribution of a contribution between different investment choices. This is a matter of allocating an employee's contributions with a 401k plan, and has nothing to do with a settlement between and employer and an employee.

The citation at column 10, lines 27-33 concerns a table indicating the total investment made by each employee. Again, this concerns what an employee has contributed, not a settlement between an employer and an employee. The division of funds is again related to the employee and the 401k plan, and has nothing to do with a settlement between and employer and an employee.

The citation at column 10, lines 55-68 again involves allocation of employee contributions. The contribution is stated in the table at block 810 – there is no disclosure of a calculation of such a contribution. The allocation concerns the employee and the 401k plan, and has nothing to do with a settlement between and employer and an employee.

In addition, the Examiner notes that Gilbert teaches calculating an investment amount based on salary, wages, bonus, overtime pay, etc., at column 15, lines 25-54. The section cited by the Examiner concerns *reports*, not calculations of investment income. Applicants have text searched the patent and can find no verification that “bonus”, “wages”, or “overtime pay” are used in the specification.

As stated previously, if the Gilbert software was coupled to the Meyer POS device, it would not have the ability to calculate settlements based on withholding preferences, along with sales and gratuity information, because Gilbert does not have the ability to calculate contributions and pass that information to the Meyer device.

For the reasons stated above, Applicants do not believe that the references cited by the Examiner, in combination, show the claimed invention of independent claims 1, 11 or 26. Accordingly, Applicants respectfully request allowance of these claims along with dependent claims 2-10 and 12-20.

Specifically with regard to claims 10 and 20, Applicants reiterate that Henderson does not teach a “portable” 401k plan. It simply states that contributions to a defined 401k plan vest immediately in an employee – and therefore the money belongs to the employee if he or she changes employers. The employee would still need to cash out his or her investments in the old plan and re-invest the money in a new plan – using whatever identifier the new plan requires.

An extension of three months is requested and a Request for Extension of Time under § 1.136 with the appropriate fee is attached hereto.

The Commissioner is hereby authorized to charge any fees or credit any overpayment, including extension fees, to Deposit Account No. 01-1615 of Anderson, Levine & Lintel, L.L.P.

Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Alan W. Lintel, Applicants' Attorney at (972) 664-9595 so that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

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October 29, 2007
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